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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,480	09/22/2003	Reinhold Schmieding	A8130.0028/P028-A	5525
24998	7590	05/31/2007		
DICKSTEIN SHAPIRO LLP 1825 EYE STREET NW Washington, DC 20006-5403			EXAMINER PRONE, CHRISTOPHER D	
			ART UNIT	PAPER NUMBER
			3738	
			MAIL DATE	DELIVERY MODE
			05/31/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/665,480	<b>Applicant(s)</b> SCHMIEDING, REINHOLD	
	<b>Examiner</b> Christopher D. Prone	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/5/07 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10, 11, and 13-15 are rejected under 35 U.S.C. 103 as being unpatentable over International Application Publication WO 99/21515 Grooms in view of United States Patent 5,961,538 Pedlick et al.

In response to claims 10, 11, and 13-15 Grooms discloses the invention substantially as claimed being an implant shown in figure 2B comprising a blunt proximal end (202), a tapered distal end adapted to receive a suture (201), a transverse eye (210), and a cylindrical shaft (204). However Grooms fails to teach the use of

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channels formed on opposite sides of the implant while maintaining the shafts cylindrical outer shape.

Pedlick teaches the use of a wedge shaped bone anchor comprising a suture through hole and a channel formed around the hole extending to the tip, in order to guide the suture thread into the hole shown best in figures 13 and 5.

It would have been obvious to one having ordinary skill in the art at the time the invention was made use the tapered channel surrounding the through hole taught by Pedlick on the implant of Grooms in order to provide an implant that has a smoother guide surface for the suture thread around the through hole.

Claim 12 is rejected under 35 U.S.C. 103 as being unpatentable over the above combination of Grooms in view Pedlick and further in view of United States Patent 6,045,554 Grooms et al.

Grooms in view of Pedlick discloses the invention substantially as claimed being an implant described above. However, the combination does not disclose that the implant is made of allograft or a synthetic bone material.

Grooms 554' teaches the use of an implant made of allograft or synthetic bone material (2:9-22) in the same field of endeavor for the purpose of providing an implant that is capable of fusing with the bone it is implanted into.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the allograft or synthetic bone materials taught by Grooms 554' with the implant of Grooms in order to provide an implant that has strength

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comparable to a metallic version, and has the advantage of leaving no residual hardware while contributing to bone stock.

### ***Response to Arguments***

In response to the applicant's arguments the examiner maintains his stance as stated in the previous office action and again below.

Applicant's argues that the shaft of Grooms is not a solid with a cylindrical shape. However, the shaft shown in figure 2B of Grooms is clearly cylindrical. The drawing is only wavy to show the flexibility of the shaft, but it still maintains a cylindrical cross-section. The examiner does not agree with the applicant's argument that since it is flexible it is not solid. The flexibility of an object has no relevance to it being a solid. From the disclosure of Brooms it is clear that the shaft 203 is a solid. The applicant further argues that the surface of Brooms implant is not smooth, but as is clear from the figures there is clearly a portion of the shaft 203 that has a smooth outer surface.

In regards to the applicant's arguments over the Applicant's amendments with respect to claim 10, they have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Prone whose telephone number is (571) 272-6085. The examiner can normally be reached on Monday Through Fri 8:30 to 5:00.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher D Prone  
Examiner  
Art Unit 3738

  
CDP

  
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